IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1320 OF 2016

RAHUL RAGHUNATH PATIL)...APPLICANT
V/s.
THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

ANTICIPATORY BAIL APPLICATION NO.1322 OF 2016

NILESH DUNDARAM PATIL)...APPLICANT
V/s.
THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.M.K.Kocharekar, Advocate for the Applicant.

Mrs.A.S.Pai, APP for the Respondent - State.

CORAM : P. N. DESHMUKH, J.

DATE : 11th AUGUST 2016

P.C. :

1 The applicants apprehending arrest in Crime No.57 of 2016 registered by Padgha Police Station, District Thane, for the offences punishable under Sections 420, 465, 467, 468, 471, 474, 406 read with Section 34 of IPC on 19th March 2016 have sought anticipatory bail. Since both the applications are arising from the same crime are heard together, and they are disposed of by this common order.

2 Heard learned counsel for both the sides. Perused the case diary made available to learned APP. It is the case of applicants that the allegations against them are with reference to misappropriation of amount, which amount they have already deposited back with the committee which committee has then deposited it back in the account of Thane District Central Co-opearative Bank. It is the case of applicant Rahul that as per Government Resolution (G.R.) and as decided by committee, he has provided material required for putting pipeline by arranging for same from local traders and accordingly committee purchased the material from applicant. It is also his case that he has followed all the procedure as prescribed by the committee as per Rules, and as such is in no way directly involved in the alleged misappropriation. It is also contended on behalf of both the applicants that on the directions of Chief Executive Officer, Thane, when the work was required to be stopped, remaining material was returned back to applicants and accordingly, the depreciated amount was deposited with the committee. Learned counsel for applicants in support of his submissions has also referred to G.R. dated 2nd December 2011 wherein guidelines are issued by the concerned department with reference to any issues raised during completion of water supply schemes and the manner in which it needs to be sorted out and by referring to this G.R. has stated that according to the guidelines in the event amount made available to contractor or to the persons who are required to implement the scheme, for any reason such scheme is stopped, is required to return back the amount received from government to the committee and in the event no such amount is refunded, in that even only police report needs to be lodged. By referring to the guidelines, it is therefore

submitted that applicants had refunded the amount, even then report came to be lodged with the police and has therefore submitted that applicants since have no criminal antecedents, they be enlarged on anticipatory bail.

3 As against this, it is the case of prosecution that both the accused in collusion with each other prepared false documents with reference to water supply scheme and on the basis of such documents obtained grants from Government of Maharashtra. It is further case of prosecution that amount to the extent of Rs.41,33,406/- was illegally disbursed without following procedure on the basis of documents forged by applicants and the amount was as such misappropriated.

4 According to learned APP, from the investigation which is in progress, it is revealed that applicant Nilesh Patil filed bogus tender in the name of persons without any permission from such persons, to work as contractors to carry out work of pipeline. Learned counsel for applicants submits that no contract was awarded to any of the contractors based on such tenders and as such, applicant Nilesh Patil cannot said to be involved in commission of any offence. With reference to submissions made on this aspect, learned APP has pointed out to statement of S.B.Butala and Kapil Thakur – proprietor of M/s.Dipesh Constructions, who have specifically denied to have filled any tender for obtaining work. In that view of the matter, though no work was allotted for any reason as tenders were not accepted, applicants cannot said to be not involved.

5 Involvement of applicant Nilesh Patil is further found to be instrumental with co-accused Kapil Thakur, who on forging signature and by preparing a false seal has withdrawn Rs.17 Lakh from the bank on the say of Nilesh Patil. According to learned counsel for applicants out of such amount, co-accused Kapil Thakur has refunded back some amount to Zilla Parishad. There is nothing to establish on record as to under what authority Kapil Thakur or applicant Nilesh Patil had withdrawn huge amount from the bank. It, thus, prima facie appears that such amount was withdrawn only with intention to misappropriate the same.

6 With reference to involvement of accused Rahul it is found that he has on the basis of false documents supplied material and infact had supplied extra material than what is required and is also found to be not in possession of license to supply material as a contractor and has prepared a false letter head which is stated to be seized during the course of investigation. Learned counsel for applicants by referring to the Inquiry Report of Deputy Engineer though had submitted that according to the report in respect of inquiry, which was initiated by directions of Chief Executive, Thane, it was found that the material supplied by Rahul was up to standard, this by itself cannot be a ground for considering in favour of applicant as it is no case of prosecution that said applicant had supplied material which was of below standard. In that view of the matter, there is no substance on this count also.

7 It is noted that investigation involves various documents to be verified and in addition to documents already seized during the

course of investigation, there is also possibility of other documents to be collected which can be possible only during the custodial interrogation of applicants.

8 Even upon relying the case of applicants, merely because part of the misappropriated amount is received, it cannot be said that there is no involvement of applicants in the offence of misappropriation or that applicants have not committed any offence.

9 Considering the scope of misappropriation, the amount involved and the role assigned to applicants, applications are therefore liable to be rejected. Hence the following order :

Both the applications are rejected.

(P. N. DESHMUKH, J.)